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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KIMBERLY OREN,

Plaintiffs,

v.

CAPITAL ONE BANK (USA) N.A.,

Defendant.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, KIMBERLY OREN ("Plaintiff"), through her attorneys, and hereby alleges the following against CAPITAL ONE BANK (USA) N.A. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on negligent violations of the Telephone Consumer Protection Act 47 U.S.C. § 227 et seq., (TCPA).

2. Count II of Plaintiff's Complaint is based on knowing and/or willful violations of the Telephone Consumer Protection Act 47 U.S.C. § 227 et seq., (TCPA).

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JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

4. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District.

PARTIES

5. Plaintiff is a natural person residing in Douglas County, in the city of Minden, Nevada.

6. Defendant is incorporated in Delaware and conducts business in the state of Nevada. Defendant's headquarters are located in McLean Virginia.

7. At all times relevant to this Complaint, Defendant has acted through its agents employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

FACTUAL ALLEGATIONS

8. Defendant is a "person" as defined by 47 U.S.C. § 153 (10).

9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.

10. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (775) 232-97XX.

11. Defendant placed collection calls to Plaintiff from phone numbers including, but not limited to (800) 955-6600.

1 12. Per its prior business practices, Defendant's calls were placed with an automated
2 telephone dialing system ("auto-dialer").

3 13. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C.
4 § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
5 owed by Plaintiff, KIMBERLY OREN.

6 14. Defendant's calls constituted calls that were not for emergency purposes as
7 defined by 47 U.S.C. § 227(b)(1)(A).

8 15. Defendant's calls were placed to a telephone number assigned to a cellular
9 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
10 227(b)(1).

11 16. Defendant never received Plaintiff's "prior express consent" to receive calls
12 using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular
13 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14 17. On or about January 2, 2018, Plaintiff called into Defendant's company at phone
15 number (800) 955-6600 and spoke with Defendant's representative and requested that
16 Defendant cease calling Plaintiff's cellular phone.

17 18. During the conversation on January 2, 2018, Plaintiff gave Defendant her social
18 security number and date of birth to assist Defendant in accessing her account before asking
19 Defendant to stop calling her cell phone.

20 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular
21 telephone and/or to receive Defendant's calls using an automatic telephone dialing system in her
22 conversation with Defendant's representative on January 2, 2018.

23 20. Despite Plaintiff's request to cease, Defendant continued to place collection calls
24 to Plaintiff after January 2, 2018.

1 21. Despite Plaintiff's request that Defendant cease placing automated collection
2 calls, Defendant placed at least one hundred and ninety (190) automated calls to Plaintiff's cell
3 phone.

4 **FIRST CAUSE OF ACTION**
5 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
6 **PROTECTION ACT 47 U.S.C. § 227**

7 22. Plaintiff repeats and incorporates by reference into this cause of action the
8 allegations set forth above at Paragraphs 1-21.

9 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
10 negligent violations of the TCPA, including but not limited to each and every one of the above
11 cited provisions of 47 U.S.C. § 227 et seq.

12 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
13 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation,
14 pursuant to 47 U.S.C. § 227(b)(3)(B).

15 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the
16 future.

17 **SECOND CAUSE OF ACTION**
18 **KNOWING AND/OR WILLFUL VIOLATIONS OF**
19 **THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 et. seq.**

20 26. Plaintiff repeats and incorporates by reference into this cause of action the
21 allegations set forth above at Paragraphs 1-21.

22 27. The foregoing acts and omissions of Defendant constitute numerous and multiple
23 knowing and/or willful violations of the TCPA, including but not limited to each and every one
24 of the above cited provisions of 47 U.S.C. § 227 et seq.

25 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227
et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, KIMBERLY OREN, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (USA) N.A., for the following:

FIRST CAUSE OF ACTION

30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (190); \$95,000.00;

31. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (190); \$285,000.00;

33. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

34. Actual damages and compensatory damages according to proof at time of trial;

35. Costs and reasonable attorneys' fees;

36. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

37. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

Date: April 29, 2019

By: /s/ Mathew K. Higbee
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